

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>13-O-11380-DFM</b>
	)	
<b>QIN ZHANG,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 225324,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

Respondent **Qin Zhang** (Respondent) was charged with three counts of misconduct stemming from a single client matter. Respondent failed to timely participate in this proceeding, either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source. A portion of the rules were revised on July 1, 2014. For the purposes of this decision, the court applies the rules as written prior to the July 1, 2014 revisions.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

As discussed in greater detail below, the present case, however, is distinguished from a typical default matter in that Respondent made multiple belated and unsuccessful efforts to participate in these proceedings. While Respondent's eleventh-hour attempt to set aside her default was denied, this court also denied the State Bar's subsequent petition for disbarment pursuant to the Review Department's instructions in *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, and ordered that a hearing be held for the limited purpose of receiving evidence of mitigation and aggravation. That hearing was held on April 6, 2015.

Following that hearing, the court finds culpability and recommends discipline as set forth below.

## **FINDINGS AND CONCLUSIONS**

### **Jurisdiction**

Respondent was admitted to practice law in this state on June 3, 2003, and has been a member since then.

### **Procedural Requirements Have Been Satisfied**

On February 19, 2014, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at her official membership records address. The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar subsequently received a return receipt bearing Respondent's name and apparent signature.

In addition, the State Bar made numerous attempts to contact Respondent. These attempts included mailing letters to Respondent at her official membership records address, emailing her at her official membership records email address, and calling and leaving messages for Respondent at her official membership records telephone number.

The initial status conference was held on March 24, 2014. Respondent did not appear. Respondent failed to file a response to the NDC. On April 7, 2014, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if she did not timely move to set aside her default, the court would recommend her disbarment.

Respondent did not file a response to the motion, and her default was entered on April 23, 2014. The order entering the default was served on Respondent at her membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time.

One day after her default was entered, Respondent sought to file both a motion to extend the time for her to answer the NDC and an answer to the NDC; however, that effort was deficient in a number of ways, resulting in the rejection of the proffered documents. The court sent Respondent a letter advising that her documents had not been filed and she was in default. Respondent then failed to take any steps to remedy her deficient effort to appear in the proceeding for nearly six months, allowing the existing trial and pretrial dates to pass.

On October 16, 2014, Respondent filed a motion to set aside her default. Accompanying this motion, Respondent included a proposed verified answer to the disciplinary charges. On October 21, 2014, the State Bar filed an opposition to the motion. On October 24, 2014, the court issued an order denying the motion to set aside default.

On November 10, 2014, Respondent filed a motion for reconsideration of the order denying her motion to set aside the default. On November 21, 2014, the State Bar filed an opposition to the motion for reconsideration. On November 25, 2014, the court issued an order denying the motion for reconsideration.

On December 12, 2014, the State Bar filed an amended petition for disbarment.<sup>3</sup> Respondent did not file a response to the amended petition for disbarment. Instead, on December 15, 2014, Respondent filed a petition for interlocutory review of this court's orders denying her motion to set aside her default and her motion for reconsideration. On December 26, 2014, the Review Department issued an order denying Respondent's petition for interlocutory review, no abuse of discretion or error having been found.

On January 26, 2015, Respondent filed with the Review Department a second petition for interlocutory review. In this petition, Respondent sought review of the court's order submitting the matter for decision. On February 6, 2015, the Review Department issued an order denying Respondent's second petition for interlocutory review, no abuse of discretion or error having been found.

In the midst of the present proceeding, the Review Department issued its decision in *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348. The *Carver* decision makes clear that the disbarment provisions for defaulting members are aimed at members who have essentially abandoned their law licenses. In *Carver*, the Review Department, in a preceding interlocutory order, declined to interpret the present default rules as mandating disbarment after an attorney filed a response to a petition for disbarment. The case was remanded to the Hearing Department with instructions that the court exercise its discretion in considering the appropriate relief. On remand, the Hearing Department then ordered that a hearing be held for the limited

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<sup>3</sup> The State Bar's previous petition for disbarment was denied, as premature.

purpose of receiving evidence of mitigation and aggravation. Ultimately, the Hearing Department recommended a level of discipline short of disbarment. On appeal, the above procedure was approved by the Review Department, which, in turn, recommended a further reduction in the level of discipline.

In light of *Carver*, this court, on its own motion, concluded that the present matter should be set aside only for the limited purpose of receiving evidence of mitigation and aggravation. The hearing in this matter was conducted on April 6, 2015. The State Bar was represented by Deputy Trial Counsel Elizabeth Stine. As Respondent remained in default, she was not permitted to participate in the hearing and did not appear. This matter was submitted for decision on April 6, 2015.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

#### **Case No. 13-O-11380 – The Google Lawsuit**

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (c) (maintaining an unjust action) by filing a meritless and frivolous action in the Los Angeles County Superior Court after the court had already disposed of a previous complaint brought by Respondent alleging the same parties and causes of action.

Count Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (o)(3) (failure to report judicial sanctions) by failing to report \$10,982 in judicial sanctions to the State Bar.

Count Three – Respondent willfully violated Business and Professions Code section 6068, subdivision (o)(3) (failure to report judicial sanctions) by failing to report judicial sanctions in the amounts of \$1,500 and \$4,756.40 to the State Bar.

### **Aggravating Circumstances**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>4</sup> std. 1.5.) The court finds the following with respect to aggravating circumstances.

#### **Multiple Acts of Misconduct**

Respondent's multiple acts of misconduct are an aggravating factor.

#### **Significant Harm**

The nature of the charges indicates that Respondent's misconduct may have caused significant harm to the opposing party or to the administration of justice. This factor, however, has not been established by clear and convincing evidence.

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) While Respondent did not participate in the proceeding, the court finds the following with regard to mitigating circumstances.

#### **No Prior Record**

Respondent has no prior record of discipline over several years of practice. Respondent had been admitted to practice law in California for nearly eight years before the misconduct in this matter. Respondent's nearly eight years of practice without prior discipline warrants some consideration in mitigation. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct.

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<sup>4</sup> All further references to standard(s) or std. are to this source.

Rptr. 287, 295 [attorney's unblemished practice of law for eight years and four months prior to start of her misconduct was mitigating circumstance but did not deserve significant weight].)

## **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.)

Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most

severe sanction for Respondent's misconduct is found in standard 2.8(a), which provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a)-(h).

The State Bar requested that Respondent be actually suspended for 60 days. In support of its recommended discipline, the State Bar cited *Sorensen v. State Bar* (1991) 52 Cal.3d 1036.

In *Sorensen*, the attorney sued the owner of a court reporting firm for fraud and deceit, seeking \$14,000 in punitive damages, in connection with a simple \$45 billing dispute. The court reporter incurred \$4,375 in legal fees and expenses. The Supreme Court found that the attorney pursued the action out of spite and vindictiveness and that "he acted on those base impulses by selecting the most oppressive and financially taxing means of redress. . . ." (*Sorensen v. State Bar, supra*, 52 Cal.3d 1036, 1042.) The Supreme Court imposed a one-year stayed suspension with two years' probation with conditions, including a 30-day actual suspension.

Here, the State Bar argues that Respondent's two additional counts of misconduct – for failing to report judicial sanctions – distinguish the present matter from *Sorensen* and warrant an increase in the period of actual suspension. However, a review of *Sorensen* reveals that the attorney there had been found by the Review Department to have also failed to obey a court order, in violation of section 6103. On appeal to the Supreme Court, the attorney argued that this finding was mistaken. The Supreme Court, however, declined to reach that issue based on its express finding that the additional culpability would not have any "appreciable" impact on its recommended discipline of 30-days actual. (*Sorensen v. State Bar, supra*, 52 Cal.3d 1036, 1042.) Since the violation of a court order would be comparable in impact to the two failures to report sanctions orders (where there was apparently no violation of the orders), the Supreme Court rationale would appear to apply here as well.



Therefore, having considered the parties' contentions, as well as the facts, standards, relevant law, mitigation, and aggravation, the court finds that, among other things, a 30-day period of actual suspension is the appropriate level of discipline to protect the public and preserve public confidence in the profession.

### **RECOMMENDATIONS**

It is recommended that respondent **Qin Zhang**, State Bar Number 225324, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation<sup>5</sup> for a period of two years subject to the following conditions:

1. Respondent Qin Zhang is suspended from the practice of law for the first 30 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to her personally or in writing, relating to whether she is complying or has complied with her probation conditions.

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<sup>5</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

6. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
7. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

#### **Multistate Professional Responsibility Examination**

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

#### **Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: May \_\_\_\_, 2015

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DONALD F. MILES  
Judge of the State Bar Court